IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13832 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SECRETARY, REVENUE DEPARTMENT & 3 - Petitioner(s)

Versus

FAKIR SIDISHA CHANDSHA & 1 - Respondent(s)

==========

Appearance :

MR. K.L.PANDYA, AGP for Petitioner(s) : 1 - 4.
MR. M.B.GANDHI with MR AMAR D MITHANI for Respondent(s) : 1, 1.2.1,1.2.2
DS AFF.NOT FILED (R) for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 18/08/2006

ORAL JUDGMENT

1. By instant Petition filed under Article 226 / 227 of of the Constitution of India, the Petitioners – The State of Gujarat and others, challenge the order dated 16.6.2006 rendered in Civil Misc. Appeal No. 6 of 2005 by the learned 3rd Additional District Judge, Veraval, by which the Appeal filed by the Petitioners has been dismissed and thereby the order dated 19.1.2005 recorded below application exh.5 in Regular Civil Suit No. 159 of 1996 by the learned Civil Judge (SD), Veraval, allowing the application exh.5, filed by the Respondent against the Petitioners, restraining the Petitioners from interfering and / or obstructing the construction work on the property owned by the Respondents, situated at Tower Chowk, opposite Public Garden, Veraval has been affirmed.
2. The Petitioners are the Defendants whereas the Respondents are the Plaintiffs before the trial Court, therefore, the parties are hereinafter referred to as they are arrayed before the trial Court.
3. The Plaintiff Trust is a registered Trust under the provisions of The Bombay Public Trusts Act (“the Act” for short)and the Plaintiffs are the Trustees of the Trust having its property situated on Junagadh-Veraval Highway road bearing Survey No. 1614 (“the suit land” for short). According to the Plaintiffs, the

Plaintiff Trust had acquired the suit land from the State Government and now the Trust is intending to make construction on the suit land for the interest of public Trust. According to the Plaintiffs, the so called construction is not violative of the provisions of the Road Ribben Development Rules or other statutory provisions nor such departments have any objection against the proposed construction. Moreover, according to the Plaintiffs, the Deputy Engineer, P.W.D. has given permission for the construction on 14.11.1995 by virtue of permission No. CV/GEN/1376 dated 14.11.1995 and thereby the proposed construction made by the Plaintiff Trust is a lawful construction and no objection certificate is also issued by the concerned department. After following all the procedures and obtaining necessary permission from the concerned departments of the municipality, the Plaintiff Trust started construction on the suit land, but the Defendant No.4, without any reason, stopped the construction by giving instruction that the proposed construction made by the Plaintiff Trust is illegal and violative of the conditions imposed by the State Government while allotment of the land. Defendant No.4 had also given instruction that after discussing the issue with the District Magistrate, he will grant permission for construction but, despite lapse of sufficient time, no response has been given

by Defendant No.4. Therefore, the Plaintiff Trust issued notice to Defendant No.4 on 8.3.1996 and also issued letter on 26.3.199. However, no response was given by Defendant No.4. Meanwhile the rate of raw material was increased and the Plaintiff Trust has suffered loss for the price of raw material and, therefore, on the apprehension that the Defendants will likely to stop the construction, the Plaintiff Trust has filed the Suit for declaration and permanent injunction.

4. Along with the Suit, the Plaintiffs have also filed application exh.5 under Order 39 of the Code of Civil Procedure (“the Code” for short) claiming interim injunction for restraining the Defendants from interfering and / or obstructing in the construction work being carried in the suit land, situated at Tower Chowk, opposite Public Garden, Verawal. In the said application the Plaintiffs have claimed that there is a prima facie in favour of the Trust and the balance of convenience also tilts in favour of the Plaintiff Trust and if injunction is not granted, the Plaintiff Trust would suffer irreparable injury, which cannot be compensated in terms of money. Hence, the Plaintiffs have prayed for interim injunction against the Defendants till final disposal of the Suit.

5. The Defendants appeared and resisted the Suit as well as application exh.5 for interim injunction claimed by the Plaintiffs, by filing written

statement exh.12, wherein, it is inter alia contended that the facts and allegations made by the Plaintiff Trust in its Suit and the application are neither true nor legal and bonafide and that the Plaintiffs' Suit is bad for want of statutory notice as provided under Section 80 of the Code, and, therefore, the Plaintiffs' application for interim injunction deserves to be dismissed. The Defendants denied the facts regarding prima facie case, balance of convenience and irreparable loss to the Plaintiffs and contended that the Plaintiff Trust has made illegal construction on the disputed land which is violative of the conditions imposed by the State Government while allotment of the land to the Trust. According to the Defendants, the disputed land is granted to the Plaintiff Trust for religious purpose, however, the Plaintiff Trust has tried to convert the suit land into commercial purpose without getting the legal permission from the Revenue authority and thereby, they have committed breach of the provisions of the Land Revenue Code. The Defendants have also contended that the Plaintiff Trust has to follow the provisions of Ribben Development Rules and as per said rules, for the purpose of State National Highway, the construction line should be 10 meter away from the center point of the road and the control (boundary) line is 36.5 meter away from the center point of the road.

The so called construction made by the Plaintiff Trust is violative of the above provisions of the Rules and, therefore also the injunction application deserves to be dismissed. Hence, the Defendants prayed for the rejection of the application.

6. Having heard learned advocates appearing for the parties, the learned trial Judge, on appreciation, evaluation and analysis of the pleadings and documents, came to the conclusion that the Plaintiff Trust has obtained necessary permission from the competent authority and, therefore, there is a prima facie case in favour of the Plaintiff Trust and also the balance of convenience tilts in its favour and, resultantly he has allowed the application exh.5 and thereby restrained the Defendants, till the final disposal of the Suit from interfering and / or obstructing the construction work on the property owned by the Plaintiffs situated at Tower Chowk, Opposite Public Garden, Veraval. The order further stipulates that the Plaintiffs are directed to construct only 7 shops on the ground floor as per the permission of Charity Commissioner. The Plaintiffs are also directed to submit their weekly account (income and expenses) to the Charity Commissioner, Rajkot.

7. Aggrieved thereby, the Defendants filed Civil Misc. Appeal No. 6 of 2005 before the learned 3rd Additional District Judge, Veraval. The learned 3rd Additional District Judge, Veraval, on re-

appreciation, re-evaluation and reanalysis of the evidence on record, has upheld the findings recorded by the learned trial Judge and resultantly, vide order dated 16.6.2006, dismissed the Civil Misc. Appeal filed by the Defendants, which has given rise to this Petition.

8. This Court has considered the the submissions advanced by Mr. K.L.Pandya, learned AGP for the Petitioners / Defendants and Mr. M.B.Gandhi, learned advocate for the Respondents / Plaintiffs, perused both the impugned orders and also considered the averments made in the Petition as well as Reply Affidavit filed on behalf of the Plaintiffs, which is sworn by Fakir Sadiksha Chandsha, one of the Trustees of the Plaintiff Trust.

9. The pith and substance of the submission advanced by Mr. K.L.Pandya, learned AGP for the Defendants centered around is that, the suit land originally belonged to the erstwhile State of Junagadh and the suit land was allotted in 1920 on the terms stipulated in the permanent allotment letter and, as per the terms and conditions mentioned therein, the Plaintiffs have to obtain permission from the Government for using the premises for any purpose other than the purpose for which the suit land was allotted and in the instant case, the Collector is the competent authority and, since the Plaintiffs have not obtained any permission from

the Collector, they have no right to construct any shop on the suit land, for which the suit land was allotted to the Plaintiffs by the erstwhile State of Junagadh.

10. According to this Court, the aforesaid contention of Mr. K.L.Pndya, learned AGP for the Defendants is misconceived, on a perusal of the document produced at exh. 3/12, which is a letter dated 8.10.1984 written by the Plaintiff Trust to the Collector, seeking permission to construct shops on the suit land. Vide exh. 3/13, the office of the Collector replied to the Trust by saying that the Trust has to obtain permission from the Charity Commissioner under the Act and, therefore, there is no necessity to grant any permission from the office of the Collector. Pursuant to the same, the Plaintiff Trust moved the office of the Charity Commissioner for obtaining necessary permission and thereafter the Charity Commissioner has granted permission to construct 7 shops on the suit land. The Plaintiffs have also obtained permission from the P.W.D after getting the Plan sanctioned from the Nagar Palika.

11. In aforesaid view of the matter, it cannot be said that the Plaintiff Trust has violated any of the terms or conditions mentioned in the permanent allotment letter, which is produced at page 14 of compilation of this Petition.

12. In aforesaid view of the matter, according to this Court, the learned trial Judge has, while

deciding the application exh.5, committed no illegality or infirmity, much less jurisdiction error in allowing the application exh.5 in favour of the Plaintiffs. The said order is also affirmed by the learned 3rd Additional District Judge, Veraval. Therefore, there is a concurrent finding of facts of two Courts below in favour of the Plaintiff Trust.

13. It would not be out of place to mention that the petitioner has labeled this petition as one filed under Articles 226 and 227 of the Constitution of India but according to this Court this is a petition filed under Article 227 of the Constitution of India and this Court treats this petition as one filed under Article 227 of the Constitution of India as it is filed against the interlocutory order.

14. The aforesaid view of this Court is fortified by the judgement of the Supreme Court in the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC 524. In the above referred to judgement, a Three Judge Bench of the Supreme Court has held that a petition would not lie under Article 226 of the Constitution of India but a petition would lie under Article 227 of the Constitution of India against an interlocutory order passed by the trial Court.

15. It would also be appropriate to refer to the decision of the Supreme Court in the case of Ouseph Mathai and others v/s. M.Abdul Khadir, (2002) 1 SCC 319. In the said case, the Supreme Court has held that the petition filed under

Article 227 of the Constitution of India cannot be treated like an extension of a statutory appeal or revision.

16. It is settled principle of law that powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B.Gandhi v. M/s Gopinath, (1992) Supp. 2 SCC 312 (iv) State of Maharashtra v. Miland and others, (2000) 1 SCC 4.

17. In view of the aforesaid discussions, according to this Court, Mr. K.L.Pandya, leaned AGP for the Defendants is unable to dislodge the findings recorded by both the Courts below. He is also unable to demonstrate what illegality or infirmity, much less jurisdictional error has been committed by both the Courts below in recording the said finding.

18.Seen in the above context, this petition lacks merit and deserves to be dismissed.

19.For the foregoing reasons, the petition fails and accordingly it is dismissed with no order as to costs. Ad interim relief granted at the time of issuance of Rule shall stand vacated.

20.At this stage, Mr. K.L.Pandya, learned AGP for the Defendants urges to continue the ad interim relief granted by this Court at the time of issuance of Rule, for a further period of two weeks, to enable the Defendants to approach the higher forum.

21.The prayer made by Mr. K.L.Pandya, learned AGP for the Defendants is strenuously opposed by Mr. M.B.Gandhi, learned advocate for the Plaintiffs as, according to him, there is concurrent finding of facts recorded against the Defendants by both the Courts below, and this Court has also dismissed the Petition. Therefore, he urges that the prayer made by Mr. Pandya, learned AGP for the Defendants may be rejected.

22.Having considered the prayer made by Mr. K.L.Pandya, learned AGP for the Defendants and the objection raised by Mr. M.B.Gandhi, learned advocate for the Plaintiffs, according to this Court, both the Courts below have recorded concurrent finding of facts against the Defendants and the only point raised by Mr. K.L.Pandya, learned AGP for the Defendants that the necessary permission has not been obtained by the Collector, which is misconceived, as, infact, the Plaintiffs have first approached the

Collector for obtaining necessary permission and the Collector has replied that no permission is required to be obtained from the office of the Collector as the Plaintiffs have to obtain necessary permission from the office of the Charity Commissioner, which the Plaintiffs have obtained. Not only that, but, the Plaintiffs have also obtained permission to construct the shop, on the suit land, from various other authorities, including Nagar Palika and P.W.D and, therefore, the prayer made by Mr. K.L.Pandya, learned AGP for the Defendants, to continue the ad interim relief for a further period of two weeks to enable the Plaintiffs to approach the higher forum, cannot be entertained and hence, the same is rejected.

(A.M.Kapadia,J)

Jayanti*